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PUTTING THE CONSTITUTION TO WORK

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THE people of America are today asking with increasing insistence these questions:

(1) Should the Constitution of the United States remain unchanged from generation to generation, a monument to the statesmen of a by-gone age; or

(2) Should the Constitution constantly be adapted to the swift changes in our economic and social life?

Those who are answering the second question in the affirmative are confronted with another problem: Is it better to make the Constitution a more flexible instrument by granting to Congress, through Constitutional amendments, adequate power over business, or by curbing the power of the United States Supreme Court? Or should advocates of a more flexible Constitution urge both additional grants of power to Congress and the limitation or abolition of the judicial veto?

The tragic conditions confronting the people of the United States during the days of the depression and the recent momentous decisions of the Supreme Court have placed these questions in the very forefront of public discussion.

Under our federal system of government, most laws of a social and economic nature have been left to the states. Congress has assumed power over only those activities specifically delegated to it by the Constitution. It has had to keep its hands off countless problems involving the regulation of industry and agriculture, problems that are national and international in scope and that cannot be solved through state action.

THE SOCIAL NEED OF CONSTITUTIONAL CHANGES

TODAY, because of our archaic Constitution, hundreds of thousands of little children are now toiling under tragic conditions in commercialized agriculture, in factories, in mines, in tenements and on the streets. In 1930 nearly a quarter of a million children between 10 and 13 years of age were gainfully employed; nearly a half million between 14 and 15 and nearly a million and a half between 16 and 17. The federal government could do little to abolish this evil. The members of the United States Supreme Court had, in all their majesty, so decided. For Congress, it maintained, had no power over labor not engaged directly in interstate commerce. The question of the abolition of child labor in interstate industry had to be left to the states. Every time, however, the defender of the child went to a state legislature and appealed for a child labor law, he was

warned by employers' representatives that inability to employ child workers in that state would put industry and commercialized agriculture at a cruel disadvantage with their competitors in other states. And usually the child labor law would be defeated or greatly emasculated.

Under the N.R.A., child workers decreased in numbers in many industries, although hundreds of thousands of children still continued to toil. Since the N.R.A. decision, a considerable increase has been reported in the number of child workers employed.

Reports were received by the National Child Labor Committee in late 1935 of children of 12, 13 and 14 years of age employed in New Jersey and Massachusetts at from $4 to $7 a week, while, in numerous other states, similar wages were paid. In Houston, Texas, a particularly glaring example of exploitation was discovered in connection with the employment of child labor at a barbecue, where children were compelled to stand 11 hours a day, seven days a week during the summer. "Luckily," the report reads, "one of the children aged 13 had the temerity to complain when he was paid only $2.25 for 5 weeks' work, and this particular exploiter of childhood was prosecuted and sent to jail."

In the cotton fields of the South, among the sharecroppers of the Southwest, and in the canneries and the tenements of all parts of the country, particularly oppressive conditions of employment are found. Without a federal statute, this evil will not be dealt with effectively. Only about one-third of the states in 1935 had regulations for minors of both sexes between the ages of 16 and 18. Only 4 or 5 states had established a 16 year old minimum for full time employment. A federal statute cannot be enforced under our present judicial set-up without an amendment to the Constitution. That is why the Child Labor Amendment to the Constitution is now before the country. This amendment declares, "The Congress shall have power to limit, regulate and prohibit the labor of persons under 18 years of age."

Low Wages

The government of the United States has no power at present, according to the interpretation of the Supreme Court, to fix minimum wages. In 1923 the Supreme Court maintained that a state might not fix such wages for women, and, in March, 1936, the New York Court of Appeals reaffirmed this decision. Still stronger is the opposition of the courts to attempts to extend minimum wages to men, or to set federal wage standards.

In the absence of minimum wage laws, wages are almost unbelievably low in many parts of the country. In Pennsylvania, the investigators of the Pennsylvania Bureau of Women and Children in 1934 reported that half of the 728 home-work families visited by them made weekly earnings of $3.54 or less, although their wages frequently represented the work of several members of the family.

"Nowhere in Pennsylvania," declares the report, "are average home-work earnings at a subsistence level. In 1934, a fourth of the families visited made less than $2 a week from their home work, and 4 out of 5, less than $6. Only 11 per cent of the families earned as much as $8 a week; yet $8.25 is the standard allowance set by the Pennsylvania State Emergency Relief Board for food and clothing alone for a family having no other resources and consisting of 5 members, 2 adults and 3 children. Five is the size of the average family in Pennsylvania."

An investigation by the Connecticut Bureau of Labor in 1933 and 1934 brought out the fact that 9 Connecticut factories engaged in making small metal products were employing families at home at carding, etc., at a median wage of $6.92 a month! Only 1 out of every 3 families investigated received as much as $12 a month. The average earnings per hour per person were 7.9 cents.

The Brookings Institution has estimated that, in the prosperous year of 1929, there were 6 million families in the United States with incomes less than $1,000, 12 million with incomes under $1,500, and over 16 million, or 60 per cent of the families, with incomes under $2,000, at a time when economists contended that $2,000 was needed to maintain a family of 5 in health and decency. Surely it is imperative that some way be found to give to Congress the power to enact minimum wage laws which would apply to all workers of the country.

Agriculture

Agriculture for years has been in the doldrums. Even before the depression, if the average farmer paid to himself $10 a week for his labor, and put aside 4½ per cent interest on the equity in his property, he would have been "in the red" at the end of the year about $285. The situation became steadily worse in the first years of the depression. This is indicated by the fact that, in the years 1929 to 1933, over one-half of the farm mortgages in the United States were in arrears and subject to foreclosure. From 1933 to 1935, a million self-respecting farm families, unable to make a living on land which once sustained them, had to be supported by the Federal Emergency Relief Administration. A recent survey in the Southern states showed that the average annual cash income of stranded families on marginal lands was $28.46 per capita, or $162 a family, although the Agricultural Extension Service indicated that the least income required per family in these sections "to maintain even a semblance of an American living standard" was $300. The condition of thousands of sharecroppers of the Southwest and of cannery workers of the West and the Pacific coast beggars description.

In the old days, the agricultural problem was regarded as local in its nature. Even in the eighteenth or nineteenth century this was far from true. Today, no farmer finds it possible to live unto himself alone. His yearly income depends to a large extent on national and even on international forces over which he has

little direct control. Whenever a depression or a war occurs in another land; whenever tariff rates go up or down; whenever the price level fluctuates; whenever mass living standards change; whenever forests are denuded, the soil eroded, and floods permitted to engulf the country-side; whenever the banking, the railroad, the electrical, the farm machinery, the marketing, and other great interests are allowed to charge unduly high prices, the welfare of the farmer is vitally affected. If these evils are to be adequately dealt with, the farmer must turn to Uncle Sam.

Social Insurance

Today, in many advanced countries of the world, the central government has enacted national systems of old age pensions, unemployment insurance, accident, and health insurance. For years we dismissed all arguments for social insurance with a superior smile. "Social insurance," we declared, with a wave of our hand, "is a dole and we in the United States are rugged individualists. We refuse to subject ourselves to a dole."

While we were saying this, we were making tens of thousands of our people victims of the demoralizing dole of a handout on the breadlines, and a few crumbs distributed as home relief.

In 1929 we entered the worst depression in our history. Private charity utterly broke down. The government was forced to appropriate billions of dollars for relief. We discovered that some form of social insurance was absolutely necessary for public morale. We passed a so-called Social Security Act, which subsidized state systems of social insurance. We refused to enact a comprehensive federal social insurance act, largely on the ground that it would prove unconstitutional, short of a revolution in the Supreme Court. Almost every country that has adopted a system of social insurance has enacted national systems. A national system is, in the opinion of many, the logical development for the United States. The first principle of any sound insurance system is that risks should be distributed over the widest possible field. A federal system of social insurance would so distribute risks. It would place back of the insurance funds the resources of the whole people. It would insure the coverage of far larger numbers of those in need of insurance than would state systems, which usually provide for a certain period of waiting before a newcomer in a state is able to take advantage of the benefits.

A national system would guarantee the extension of insurance to every state in the union. It would lead to higher and more economical methods of administration, eliminate the wastes involved in the conduct of 48 different state funds, and aid in more efficient job placement. It would make possible a proper coordination between old age pensions, unemployment insurance, health, and accident insurance systems. It would prevent the use of the argument mentioned before that industry in a more progressive state would be handicapped in its struggle with business concerns of other and less progressive states. This

argument is largely specious, since the cost of such insurance usually increases the cost of production but slightly. Such additional protection to the wage-earner, moreover generally leads to increased efficiency, expands total purchasing power, stimulates business and reduces the cost of other forms of public relief. But the argument advanced by manufacturers usually carries much weight with legislators.*

Regulating Utilities

Today in America it is difficult, with the conflicting authority of state and national legislatures, even to begin effectively to regulate thousands of electrical and other corporations that, while technically local in their operation, are in reality a part of a great national and international network.

Today in America, whenever the federal authorities are urged to take a hand in insuring freedom of speech, of press and of assembly, or in preventing discrimination between men and women of different colors and races, they can claim that their hands are tied. The nation has not specifically been granted this power by our Founding Fathers, unless the problem has interstate ramifications. If the state refuses to grant justice, it is just too bad for many a victim. And an analysis of the status of civil liberties in the United States indicates how poorly enforced by judges are many of the guarantees of civil rights in the state constitutions.

Wasting Our Resources

The United States is wasting its resources like a drunken sailor. The National Resources Board in 1934 declared that, in connection with the exploitation of petroleum, a billion cubic feet of natural gas in 1 oil field was being blown into the air daily. "That is gas enough," it declared, "to supply the United Kingdom twice over. It is 40 times as much gas as all the Scandinavian countries use together. It is almost enough to supply every householder in the United States now consuming either natural or artificial gas. The only use made of this particular gas is to strip it for the tiny fraction of gasoline which it contains, and this at a time when the supply of gasoline from other sources is already so great that measures to limit production are thought to be necessary. Similar wastes, though fortunately on a smaller scale, are going on in other gas fields and in other industries." And this in the face of such reports as those of the Department of the Interior in December, 1935, that the known oil reserves in the United States at the end of 1933 were only 14 times the 1934 output!

This is but one example of the many wastes that are taking place in the

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*The constitutionality of state systems of unemployment insurance has not been as yet finally established. On Feb. 29, 1936, the New York Supreme Court at Utica held the New York State Unemployment Insurance Act partly void, though basically legal. It held void that part of the Act which gave benefits to those who were discharged, and (after 7 weeks) to strikers and those quitting their jobs.

exploitation of the natural resources of the United States. These wastes cannot be avoided by the passage of state laws. Many of the resources cross state lines. If operators in a field in one state conserved their resources for the future, they might be placed at a disadvantage in their competitive war against those in other states. It is true that several states have attempted by state compacts to deal with the situation. But it is difficult to get adjoining states to carry out a given policy. The federal government is the only effective agent. Yet thus far it has been given no adequate power to deal with this situation. Past state and federal action has done something to reduce waste, but its chief effect has been to raise prices.

Thus the Constitution of the United States, as interpreted by the Supreme Court, is greatly delaying the people of this country in their fight to abolish child labor, to enact social security and minimum wage legislation, to conserve the rich natural resources of the country, to guarantee the maintenance of civil liberties, and to regulate agriculture and industry. The courts have shown in general an unwillingness to let even the state intervene, not to speak of the federal government, except in the fields of child labor and in a few other phases of our industrial situation.

Our Declining Capitalism

Unless the Constitution or its present interpretation is changed, it may likewise prevent the country from ushering in, without years of suffering, a secure and abundant economic order.

The system of private property in the basic industries of the country known as capitalism, is making for increasing insecurity as the years advance. We have muddled along with our periods of "prosperity" and our periods of depression for generations. Today, however, our American economic system cannot depend on the same type of oxygen as it breathed in the past to keep it going. It has no new frontiers to push back. Its foreign markets are ceasing to expand. Its population growth is coming to a standstill. And its rising debt structure, its increasing inequalities of income, its lightning technological changes, and its ever greater trends toward monopoly are all making for an increasing lack of balance between our power to produce and the power of the masses to consume. If we want to stop this drift toward chaos, we must reorganize society; we must advance to a cooperative society in which the community owns and democratically controls its basic industries—its natural resources, its public utilities, its banking structure, and its principal means of production and exchange.

For only under such a system will income be equitably distributed to those who contribute their brain and their brawn to the common task. Only then will the gross inequalities of wealth and income based, not on industry, but on mere ownership of the machinery of production, be a thing of the past. Then and

then only will it be possible for society to develop a common sense, scientific plan of production and distribution of the necessities of life. Then and then only will society be able to abolish the economic cause of dictatorship and of international conflict. And yet the present constitution would prove a genuine obstacle against such common sense socialization.

It must, however, in justice to the courts, be said that they have shown a disposition to pronounce industrial undertakings of various state governments constitutional. Should the state legislatures decide that these enterprises are necessary to the health, safety or welfare of the people of the state, the United States Supreme Court has held that it is not for the federal government to interfere. A federal undertaking, however, lies in a different class.

How the Constitution was Formed

In view of these grave social conditions which Congress seems impotent adequately to deal with, the demand for a change in the Constitution has been increasing as the years have advanced. In all discussions of constitutional changes, it is necessary to keep one thing clearly in mind: that the Constitution is not a holy document which was handed to the American people from above. It was a very human document prepared by men with valuable economic and financial interests to conserve. None of the Founding Fathers was satisfied with the product. They indorsed it as the best compromise that they could obtain during days of great restlessness and suffering, and took it for granted that constitutional conventions would meet periodically to revise it as time went on. "Had Jefferson had his way, a complete revision of the Constitution once in a generation would have been made compulsory."

America at Formation of Constitution

The country at the time of the adoption of the Constitution consisted of 13 colonies huddled along the Atlantic seaboard. The great majority of the population—less than 4,000,000, as compared with 30 times that number today—were farmers, using crude plows that cut neither straight nor deep and unwieldy wooden forks and harrows. The majority of the farmers made their own homespun clothing, shoes, candles, and furniture, besides producing all of their own food, and, in cooperation with their neighbors, building their own houses. Most of them were in debt and worried about the future.

Others of the population were engaged in fishing, in fur trading, and in commerce. There was likewise a small manufacturing class, besides a number of artisans, bankers and members of various professions. There were few large concerns and industry, for the most part, was local.

The system of distribution was quite primitive. On account of the poor transportation facilities, the people depended in many cases on weekly markets and semi-annual fairs where manufactures and the products of the farmers and

villages were exchanged. Railroads were unknown. Until the latter part of the eighteenth century, it took several days on a stage coach to travel from New York to Philadelphia.

At the time of the Revolution, Philadelphia was the only city with a population of 25,000, although Boston and New York were approaching that number.

In the South slaves constituted about 40 per cent of the population. In the North the working class consisted of free labor and indentured servants. In the seventies wages in the colonies, according to Professor J. B. McMaster, averaged less than $2 a week. With this wage the mechanic, only by the strictest economy, could keep his family from starvation and himself from jail. In 1780 the pay of butchers was about 33 cents a day, and that of carpenters, 52 cents. The houses of the workers "were generally small, unsanitary, and crowded; the furniture of the crudest; glass window panes were often unknown; floors were covered with sand and straw. Stoves the laborer knew not, coal he had not seen." Debtor's prisons were everywhere glutted.

The workers were, for the most part, politically inarticulate. It is difficult to tell how extensive were the property qualifications for voting in the various states. In some states, for instance, Pennsylvania and Georgia, propertyless mechanics in the towns could vote; but, in a number of other states, adults were excluded from the franchise unless they held real estate. In no state did the working class groups make their special problems a political issue. "In turning over the hundreds of pages of writings left by eighteenth century thinkers," declares Professor Beard, "one cannot help being impressed by the fact that the existence and special problems of a working-class, then already sufficiently numerous to form a considerable portion of society, were outside the realm of politics, except insofar as the future power of the proletariat was foreseen and feared."

When the revolutionary fathers ended the war, they found that their commerce had been annihilated, that their shipping had been nearly destroyed, their public credit impaired, and they had been saddled with a vast debt.

Articles of Confederation

To bind the colonies together and bring some semblance of order out of chaos, the new nation adopted the Articles of Confederation. These articles did not create a nation. They merely helped to form a league of states in which each separate state was to retain its "sovereignty, freedom and independence." Under the terms of the Articles of Confederation as set forth in Article III, "the said states hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual, general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, on account of religion, sovereignty, trade, or any other pretense whatever."

The sole organ of the government set up by that instrument was the Congress, composed of delegates from each state elected by the legislatures. "Enjoying no independent and inherent power drawn directly from the people, this government was the creature of the state and the victim of the factional disputes that filled the local theatres of politics. It was in effect little more than a council of diplomatic agents engaged in promoting thirteen separate interests, without authority to interfere with the economic concerns of any."

It had the power to appropriate money, but not to collect taxes. It had to go to the legislatures with cap in hand and ask them to contribute to the common cause. It received from the legislatures only about one-fourth as much as it asked to defray the expenses of government. It had no power over currency and banking. These powers were left to the individual states. And each state retained the right to pass its own tariff legislation. In fact, in those days we saw the absurd procedure of New York enacting entrance and clearance fees of all vessels going to and from New Jersey which supplied New York with specific commodities; New Jersey retaliating with a tax on the New York lighthouse purchase on Sandy Hook; Connecticut suspending business with New York for a period of 12 months and imposing a penalty of $250 on any one violating the boycott; and other states enacting discriminatory legislation against their neighbors.

During these days, money lenders who held outstanding notes and mortgages were often compelled to receive in payment depreciated paper currency issued by the legislatures of farming states. Creditors were frequently unable to collect debts recognized by the treaty of peace. Officers and soldiers who held land warrants in return for war services and capitalists engaged in speculating in Western lands, found it impossible to realize on them until the government had an army large enough to protect these lands against hostile Indians on the frontier.

At the same time, the debtor classes were becoming articulate, and were appealing to the various legislatures to ease their burdens. In several states, the farming element was agitating to strike from the state constitutions the special privileges enjoyed by property, to scale down the state debt, to issue paper money, and generally to assist the small farming and the laboring groups. The famous Shay's Rebellion was one of the spectacular expressions of this agitation.

Something, declared the creditor, commercial, manufacturing, and land-owning groups, must be done to strengthen the hands of the central government, to see that debts were paid, a sound currency established, commerce regulated, Western lands distributed, and democratic agitation kept within bounds.

The Constitutional Convention

The result was the calling of a convention in Annapolis, without any legal sanction, attended by delegates from 6 out of the 13 colonies. On the suggestion

of this conference, a second convention was convened in Philadelphia in 1787 to "revise" the Articles of Confederation in order to render them "adequate to the exigencies of the Union." The Philadelphia convention was attended by delegates from 12 of the 13 states, a remarkably able group of men, but nearly all representative of the conservative wing of the old revolutionary party. "Not one member represented in his immediate personal economic interests the small farming and mechanic classes."

None of the fiery radicals of 1774 was present. Jefferson was away in France. Patrick Henry refused to attend because, as he said, he "smelled a rat." Thomas Paine was in Europe. Samuel Adams was not chosen a delegate. The convention was thus made up of "practical men of affairs—holders of state and continental bonds, money lenders, merchants, lawyers, and speculators in the public land. . . . More than half the delegates in attendance were either investors or speculators in the public securities which were to be buoyed up by the new Constitution. All knew by experience the relation of property to government."

"At least five-sixths [declared Dr. Charles A. Beard] were immediately, directly, and personally interested in the outcome of their labors at Philadelphia, and were to a greater or less extent economic beneficiaries from the adoption of the Constitution."

More specifically, Dr. Beard declared that 40 out of the 55 members who attended the Convention held depreciated public securities in amounts varying from a few dollars up to more than $100,000. With the exception of New York, and possibly of Delaware, each state had one or more prominent representatives in the Convention who held more than a negligible amount of securities, "and who could therefore speak with feeling and authority on the question of providing in the new Constitution for the full discharge of the public debt." Investments in lands for speculation was represented by at least 14 members; property in slaves by at least 15; investments, in the form of money loaned at interest, by 24 and property in mercantile, manufacturing and shipping lines by at least 11 members. Of course these members were not living in a vacuum. They were deeply influenced in their deliberations by their economic interests and those of the groups they represented. To them, the labor and social problem as we know it today, was virtually non-existent. On the other hand, they could not with impunity wholly ignore the state of mind of the masses of the people who had suffered severely during the revolutionary days and who were anxious to see certain definite reforms effected.

The convention was held behind closed doors. No minutes were taken of its proceedings. The delegates saw to it that Benjamin Franklin was accompanied by proper attendants between the sessions, so that he would not tell at his convivial gatherings too much of what was going on in Constitution Hall. Only after the death of James Madison, who took notes on the proceedings, was the world let into the mystery of the debates.

Instead of giving their attention to the revision of the Articles, the delegates, early in the sessions, decided to scrap the Articles and to begin the painful process of building an entirely new Constitution. In disregard of the provisions of these Articles, which required unanimous consent by the 13 states to any changes, they decided that the new instrument would be effective if 9, not 13, states ratified it. Our present Constitution was therefore written and adopted unconstitutionally.

Delegates on "The Evils of Democracy"

Those present agreed in general that the Constitution should be so written as to guarantee the rights of private property against the radicalism of that day. "Almost unanimous was the opinion that democracy was a dangerous thing, to be restrained, not encouraged, by the Constitution, to be given as little voice as possible in the new system, to be hampered by checks and balances."

Eldridge Gerry of Massachusetts, as the Beards point out, voiced the opinion that the evils experienced by the country were due largely to "the excess of democracy." Randolph traced the troubles of the times to "the turbulence and follies of democracy." Alexander Hamilton of New York, one of the most potent figures in the convention, in urging a life term for Senators, claimed that all communities divided themselves into the few and the many. The first are rich and well-born, and the other are the mass of the people "who seldom judge or determine right." Morris wanted a Senate composed of an aristocracy of wealth "to keep down the turbulence of democracy."

James Madison of Virginia, in discussing the problem of the franchise, warned his colleagues against the coming of the industrial masses: "Viewing the subject on its merits alone," he declared, "the freeholders [the property owners] of the country would be the safest depositories of republican liberty. In future times, a great majority of the people will not only be without land, but any other sort of property. These will either combine, under the influence of their common situation; in which case, the rights of property and the public liberty will not be secure in their hands, or, which is more probable, they will become the tools of opulence and ambition; in which case there will be equal danger on another side."

Madison declared that the delegates' object was "to secure the public good and private rights against the danger of such a faction and at the same time preserve the spirit and form of popular government." Other like sentiments indicated the fear of the democratic process among large numbers of delegates.

Many of the delegates would have liked to have placed property qualifications around the federal franchise. But, if they provided that a man should hold a certain amount of personal property to entitle him to vote, the ratification of the Constitution would be opposed by the agrarian states. The landed qualification was the only alternative, but experience showed that it was the farmers,

and not the city population, who, at that time, sent radicals to the legislatures. Large numbers of city workers did not possess the franchise.

The delegates, after several days of debate, therefore, finally decided to drop that limitation on the franchise. Instead of this, they developed a system of "checks and balances" to prevent "democratic excesses." They created a House of Representatives, elected in such a way, as Hamilton had it, as to give the poorer orders of men a hearing in the government. But before a measure could be enacted into law, it had to pass the Senate, whose members were elected by the legislatures, one layer removed from the people, for a period of 6 years. Then came the Chief Executive, the President, elected by Presidential electors for 4 years, possessing large administrative powers and given a veto over the acts of Congress. And finally came the judges, appointed not for a short term of years, but for life, and with great power over the acts of the legislative and administrative departments. As Hamilton explained in dealing with this intricate system of checks, friends of good government were of the opinion that "every institution calculated to restrain the excess of law making and to keep things in the same state in which they happen to be at any given time was more likely to do good than harm."

The Supreme Court and the Constitution

Nothing was said in the Constitution regarding the veto power of the Supreme Court. The delegates, as Gouverneur Morris declared, approached the task of endowing the courts with any power with extreme caution. Whether they ever expected the Supreme Court to take to itself the power to declare acts of Congress unconstitutional is a mooted question. The Beards maintain that acts passed by colonial legislatures had repeatedly been nullified by British courts, and that a few precedents had been set in American courts during the critical period. While in popular circles the theory and practice of judicial veto had been vigorously attacked, it had been just as vigorously defended in the Philadelphia Congress and outside of it by lawyers accustomed to the business of high judicature. Louis B. Boudin, in his *Government by Judiciary*, however, points out that time and again the suggestion that the courts be given this power of veto was turned down by the convention. James Madison was unconvinced that the Supreme Court should be allowed to invalidate acts of Congress. Thomas Jefferson years later in a letter written on September 28, 1820, declared:

"It has long been my opinion, and I have shrunk from its expression, that the germ of dissolution of our federal government is in the judiciary—the irresponsible body working like gravity, by day and by night, gaining a little today and gaining a little tomorrow and advancing its noiseless step like a thief over the field of jurisdiction until all shall be usurped."

There were many debates over slavery, states' rights, and the commerce and other clauses, in each case leading to some type of compromise. Many of the most powerful of the delegates were for a strongly centralized government. Madison, as he wrote of himself in *The Federalist*, "was more and more convinced that the regulation of commerce was in its nature indivisible and ought to be wholly under one authority."

Roger Sherman of Connecticut was of the same opinion, maintaining: "The power of the United States to regulate trade being supreme can control interferences of the state regulations when such interferences happen; so that there is no danger to be apprehended from a concurrent jurisdiction."

Moreover, as Irving Brant brings out, the framers of the Constitution were of the opinion that that instrument gave to the national government power to regulate and grant mercantile monopolies. The subject came up for discussion on September 14, 1787, 3 days before the signing of the Constitution. "As to mercantile monopolies," said Wilson of Pennsylvania, afterwards Justice of the United States Supreme Court, "they are already included in the power to regulate trade."

This, George Mason of Virginia, the most extreme advocate of states' rights in the Convention, for a while at first denied. Later he admitted that the power was there, and wrote on the back of his copy of the Constitution that he was refusing to sign because, among other things, "the Congress may grant monopolies in trade and commerce." Eldridge Gerry of Massachusetts, in likewise refusing to sign, said: "Under the power over Congress, monopolies may be established."

The Constitution, indeed, marked a great advance toward federalism, yet the self-sufficient nature of the production and exchange of that day meant that our type of problem had little meaning for the Founding Fathers. The Constitution, framed under these conditions, and interpreted along traditional lines, could thus not be expected to serve adequately the needs of a highly complex industrial civilization. Especially is this the case when one analyzes the anti-democratic point of view of many of the delegates to the Convention.

On September 17, 1787, the labors of the Convention, after nearly 4 months, came to an end. Some of the delegates had left the Convention Hall in anger. Some stayed, but refused to sign the document. On the other hand, 39 out of 55 delegates who attended most of the sessions put their names to the parchment and sent it out for ratification. Washington expressed the sentiment of most of these when he said: "The Constitution that is submitted is not free from imperfections. But there are as few radical defects in it as could be expected, considering the heterogeneous mass of which the Convention was composed and the diversity of interests that are to be attended to. As a consti-

tutional door is open for future amendments and alterations, I think it would be wise of the people to accept what is offered to them."

Battle over Ratification

The battle over the ratification of the Constitution was a heated one. In Massachusetts, General Knox wrote to Washington that, in favor of the Constitution, was "the commercial part of the state to which are added all the men of considerable property, the clergy, the lawyers including all the judges of all the courts, and all the officers of the late army, and also the neighborhood of all great towns. . . . This party are for vigorous government, perhaps many of them would have been still more pleased with the new Constitution had it been more analogous with the British Constitution." In the opposition, General Knox massed the "insurgents or their favorers, the great majority of whom are for the annihilation of debts, public and private."

Madison urged the ratification of this document on the ground that it provided adequate checks against the impetuous will of the majority. In Pennsylvania, when certain of the state legislators who opposed the Constitution sought to win time for deliberation by leaving their seats and breaking the quorum, the Federalist mob invaded their homes and dragged them back to the legislative halls. Like pressure was brought on legislators from other states.

Ratification conventions finally met and, after many a wild scene, gave their approval to the instrument. Perhaps one-fourth of the adult white males in the country voted in the elections at which delegates to the conventions were chosen, while probably no more than 100,000, about one-sixth of the voters, actually cast their vote in favor of this instrument.

It was several years after the ratification of the Constitution that North Carolina and Rhode Island decided to become a part of the new United States. This decision was arrived at in Rhode Island in 1790, only after the United States Senate had passed a bill for the severing of commercial relations between the United States and that New England state, and then the motion for ratification won by only 2 votes.

Probably no one during those days, even the most enthusiastic supporters of the Constitution, would have claimed that it was an perfect instrument suited alike to conditions in the eighteenth and the succeeding centuries. That the people of the day regarded the Constitution as a fallible document subject to infinite improvement was further indicated by the promptness with which they submitted amendments, some of which had been informally promised during the campaign for ratification.

The Constitution is Amended

Boiling down to their essence a large number of amendments suggested by the legislatures, Madison submitted a group of 10 amendments to the first

Congress. The first of these was the famous amendment on free speech, which maintained that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to assemble and to petition the government for the redress of grievances."

Other amendments sought to protect the citizens of the country against the oppression of the military, the police, and the courts. The Fifth Amendment which declares, among other things, that an individual shall not "be deprived of life, liberty or property without due process of law," originally intended as a liberalizing instrument, has unfortunately been since so interpreted as to render unconstitutional much valuable social legislation, and "has caused more havoc than any other constitutional doctrine." The United States Supreme Court has, in many instances, shown an unwillingness to review proceedings in state courts, when defendants have complained that they were deprived of their property, without due process of law, in the original sense in which that phrase was used.

The Tenth Amendment, passed to satisfy a number of advocates of states' rights, announced that all power not delegated to the United States by the Constitution or withheld by it from the states were reserved to the states respectively or to the people.

These 10 amendments were soon ratified. Seven years later, in 1798, they were followed by an Eleventh Amendment, forbidding the federal judiciary to hear any case in which a state was sued as a citizen. This amendment was adopted as a corrective to the first unpopular Supreme Court decision.

The Twelfth Amendment, describing an elaborate procedure for the election of the President and the Vice-President by the electoral college, ratified in 1804, was the last to be passed prior to the Civil War. After the war, the nation quickly ratified the Thirteenth, Fourteenth, and Fifteenth Amendments. The Fifteenth Amendment, passed in 1870, supposedly enfranchised the Negroes, declaring that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude." These amendments, unfortunately were not applied as intended and even today millions of Negroes are, to all intents and purposes, disfranchised in the South.

The Income Tax Amendment

It was not until 1913, a short while before the World War, that the next amendment—the Sixteenth—was adopted. This was the first amendment dealing with a purely economic question. It was the famous income tax amendment. It read: "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived; without apportionment among the several states, and without regard to any census or enumeration."

This amendment settled a controversy of many years standing. Way back in 1894, the Democrats and Populists passed an income tax law in connection with the tariff law of that year, imposing a tax of a few per cent on the larger incomes. Several well-to-do men refused to pay the tax on the ground that it was "inquisitorial, perjury provoking, undemocratic and unconstitutional." They hired some of the most astute lawyers of the day, including Joseph H. Choate, a lawyer for John D. Rockefeller, to defend their case. Choate, in an eloquent speech to the judges, declared that the "communist march" must be stopped; that property demanded immediate and unconditional security in its rights, and that with this country it was "now or never."

The judges, by a vote of 5 to 4, one judge shifting his vote at the last moment, decided that the law was unconstitutional, the judges changing the legal definition of "direct tax" to hold the law invalid. "The present assault upon capital," said Justice Field in his opinion (Pollack *v.* Farmers Loan and Trust Co.), "is but the beginning." Justice Harlan of the minority, however, felt that the majority decision was without warrant and was calculated to give to "aggregated wealth" a position of favoritism as objectionable as the dominion of the lawless.

The conservative press hailed the decision as a triumph for sound government. "The wave of the socialist revolution has gone far," declared the editor of the New York *Sun*, "but it breaks at the foot of the ultimate bulwark set up for the protection of our liberties. Five to four the Court stands like a rock."

The New York *Tribune* saw in "the influence behind this attempt to bring about a communist revolution in modes of taxation," an un-American effort to destroy domestic industries in the interest of foreigners. On the other hand, Governor John P. Altgeld of Illinois regarded this decision as on all fours with the Dred Scott decision prior to the Civil War.

As a result of this judicial pronouncement, the United States was deprived for nearly a score of years of the chance of imposing this tax, one of the soundest forms of taxation ever devised, and the people were the losers by tens of millions of dollars. It was not until the campaign of 1908 that the income tax again came into prominence. In that year all the presidential candidates pledged themselves, if elected, to work for an income tax. Following the election of President Taft, the Sixteenth Amendment was submitted to the states, was ratified, and became a part of the Constitution in 1913, in time for President Wilson to incorporate it in his fiscal system. The later income taxes, though much more drastic in their provisions than those suggested in the nineties, have not as yet brought "the communist revolution."

In the case of the income tax, it is of course true that the judicial veto did not permanently prevent the people of the country from adopting that type of tax. This has led some advocates of the judicial veto to declare: "Don't limit the powers of the Court. The Court's decisions can always be overruled." How-

ever, the fact must be again emphasized that it took a score of years to overrule this decision, with consequent great loss to the people of the nation. The child labor decisions of 1918 and 1919 have not as yet been negatived by the people of the land. The task of securing the ratification of an amendment by the legislatures of three-fourths of the states is usually a difficult one. It must further be emphasized that, in but a few instances,—in those of the Eleventh, Thirteenth, Fifteenth and Sixteenth Amendments—has the Court been overruled by the vote of the people.

In the same year—1913—the Seventeenth Amendment, providing for the direct election of United States Senators, was ratified. Seven years later, in 1920, following the war, one of the most controversial of the amendments passed by the people—the Eighteenth, or Prohibition Amendment—started the country on its short lived "noble experiment." Then came the Nineteenth Amendment, which conferred on women the right to vote, the Twentieth Amendment, which changed the date of the inauguration of the President from March 4 to January 1, and the Twenty-first Amendment, repealing the Prohibition Amendment. There would today be wide agreement that all of these amendments, with the exception of the ill-starred Prohibition Amendment, and a few sentences in the Fifth and Fourteenth Amendments that have been used for reactionary ends, were valuable additions to the fundamental law of the land, though, alas, some of them were sadly perverted or only partially enforced.

Power to Declare Laws Unconstitutional

Despite these increases in federal power, many a piece of legislation which, in other industrial countries, is considered proper and necessary legislation for the national government to enact, has been declared in this country unconstitutional.

The power to declare laws of Congress unconstitutional was not assumed by the Supreme Court until the famous Marbury *v.* Madison Case (5 U. S. 137), decided in 1803, 14 years after the ratification of the Constitution. In this case Justice Marshall declared that the Constitution gave the Supreme Court no jurisdiction over certain legal cases and that the section of the Judiciary Act conferring power over them was therefore unconstitutional.

In an aside in this case the Chief Justice declared: "It is emphatically the province and the duty of the judicial department to say what the law is. . . . So if a law be in opposition to the Constitution; if both the law and the Constitution apply to a particular case, so that the Court must either decide that case conformably to the law, disregarding the Constitution, or conformably to the Constitution, disregarding the law; the Court must determine which of these conflicting rules governs the case. This is the very essence of judicial duty."

Though this power of judicial review over Congressional laws was assumed by the Court in 1803, from that year until 1857, the year of the Dred Scott

decision, the Supreme Court declared no congressional law unconstitutional.

In fact, during these 50 years, it emphasized the need for an increase rather than a decrease of federal power. In those days business enterprise was on the upswing. It did not wish to be thwarted by state legislative checks. It wanted to have a chance to develop. Justices like Marshall were in full sympathy with this desire of business. This sympathy was evidenced in Marshall's decisions involving the constitutionality of the Second United States Bank (McCulloch *v.* Maryland, 1819) and in Gibbons *v.* Ogden and other cases: "These decisions were a part," as Lerner maintains, "of the upswing of a rising capitalism. Through them Marshall sought to strengthen congressional jurisdiction over the 2 main lines of business expansion of the day—a national banking system and a national transportation system. In the early stages of industrial capitalism, the function of the central government was to insure favorable conditions for the development of business enterprise."

At the same time, other decisions of those days, as in the famous Dartmouth College case, tended to weaken the power of state legislatures over the business interests of the various states. Many vigorously denounced the Court in these years for its partiality to the central government and for its refusal to declare such laws as the Sedition Law, the Embargo Act, the Fugitive Slave (1859) and other federal laws unconstitutional.

The Dred Scott Decision

In the Dred Scott decision of 1857, the Court broke its long record of non-interference with the legislative enactments of Congress.

In this case Dred Scott, a Negro, demanded his freedom after his master had taken him from Missouri to the free state of Illinois, and thence back to Missouri. Scott maintained that, when he was taken to Illinois, his master's right of property had been broken. Chief Justice Taney, who wrote the decision—two justices dissenting—denied this, contending that a slave did not become automatically free on being taken out of a slave territory or state. In an aside, he declared that, inasmuch as slaves were property and not persons, neither Congress nor territorial bodies could prevent the owner of slaves from going where he wished with his property. The decision caused great resentment. The New York *Tribune* asserted that the Court's declaration was entitled to "just as much moral weight as would be the judgment of a majority of those congregated in any Washington bar room. . . . Until that remote period when different judges sitting in this same Court shall reverse the wicked and false judgment, the Constitution of the United States is nothing better than the bulwark of inhumanity and oppression."

Republican leaders declared that, if elected, they would have this decision reversed. William H. Seward averred in 1858 that his party meant to "reorganize" the Court. Zachariah Chandler, another prominent Republican, an-

nounced that the Republicans would "annul" the decision. Abraham Lincoln, on September 18, 1858, declared that the people would have to prepare themselves "for the chains of bondage if the election shall promise that the next Dred Scott decision and all future decisions will be quietly acquiesced in by the people." Subsequently, in his Inaugural Address on March 4, 1861, he maintained that "the candid citizen must confess that, if the policy of the government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made, in ordinary litigation between parties in the personal actions, the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of that eminent tribunal."

Labor Legislation Declared Illegal

Between 1789 and 1864, only two acts of Congress were declared illegal. Following the Civil War, however, the Court took a far more active hand in the vetoing of congressional legislation. Between 1906 and 1936, when labor and other groups were striving to enact social legislation, 48 acts were pronounced unconstitutional by the highest Court. Among the decisions in this period were:

(1) The decision in the Adair Case (Adair *v.* U. S., 1907), in which the Court pronounced unconstitutional the portion of the Erdman law which forbade employers in interstate commerce from discharging men because of their union membership;

(2) The Child Labor decision in 1918 (Hammer *v.* Dagenhart), a 5 to 4 decision, declaring unconstitutional the Keating-Owen law, which sought to exclude from interstate commerce goods manufactured in establishments employing children under 14 years of age;

(3) The Second Child Labor decision in 1919 (Bailey *v.* Drexel Furniture Co.), outlawing another child labor act which laid a 10 per cent tax on the profits of firms employing children under 14;

(4) The District of Columbia Minimum Wage decision, invalidating, by a vote of 5 to 3, a minimum wage law protecting women and children, and, indirectly, rendering unenforceable similar labor laws in many states of the Union.

A considerable number of decisions were rendered during that period overruling state laws, among them those in the Lochner case (198 U. S. 45) in which a New York State law limiting the number of hours of bakers, was declared unconstitutional by a 5 to 4 decision; and in the Truax case, in which an Arizona statute limiting the use of injunctions in labor disputes was held unconstitutional.

Due Process of Law

In many of these cases, the Court gave to a phrase in the Constitution a meaning never intended by the Founding Fathers. This is particularly true

of the phrase, "due process of law," a phrase applying both to state and federal governments. "Originally meaning nothing more than that the party defendant should be served with notice and have his day in court," this phrase has given an extension wide enough to enable the Court to express its opinion of the desirability or undesirability of the acts of legislatures or legislative agencies on many a social and political question.

The "due process of law" doctrine has doomed minimum wages, regulation of the hours of labor, regulation of various kinds of businesses, the establishment of railroad pensions, and a great variety of taxes. And the "due process" phrase was only one of many vague phrases which has given the Court an excuse for invalidating many laws.

These decisions of the Supreme Court before the inauguration of the "New Deal" led many an American to urge an amendment to the Constitution limiting the power of the Supreme Court to declare laws unconstitutional. The platforms of the Socialist party in 1912 and 1916 urged "the abolition of the power usurped by the Supreme Court of the United States to pass upon the constitutionality of legislation enacted by Congress. National laws to be repealed only by acts of Congress or by a referendum of the whole people." Theodore Roosevelt, in his campaign of 1912 under the banner of the Progressive party, advocated "such restriction of the power of the courts as shall leave to the people the ultimate authority to determine fundamental questions of social welfare and public policy." Senator Robert M. LaFollette, running on the Progressive ticket in 1924, vigorously urged an amendment to the Constitution to the effect that "Congress may by enacting a statute make it effective over a judicial vote." The late Justice Holmes expressed it as his belief in 1913 that, "while the Union would be imperilled" if the Supreme Court could not declare state laws unconstitutional, "the United States would not come to an end" if the Court's power to invalidate acts of Congress were abolished.

The Supreme Court and the New Deal

During the thirties, the Supreme Court rendered a series of momentous decisions regarding the constitutionality of laws passed in the Roosevelt "New Deal" administration.

On January 7, 1935, the Court held invalid Section 9c of the Recovery Act, under which the President issued an executive order forbidding the transportation of oil in excess of the amounts allowed under state laws. Four months later, on May 6, the Court maintained that the Railroad Retirement Act, in which Congress sought to provide retirement pensions for railroad employees and some former employees, was unconstitutional. The act provided that employees of the railroads should be automatically retired at 65, except under special circumstances, while those with 30 years' service could be retired before that age. Those thus let go were to receive a pension from a fund established

in the Treasury Department, and contributed to by employees and the railroad companies. The workers were to pay into the fund 2 per cent of their compensation, and the railroad companies, twice that amount. The act was to apply to those in the railroad service at the time of the passage of the law, as well as to those employed by the railroad within a year before its enactment.

Justice Roberts rendered the decision for the majority of the Court. He declared that the law was without due process in applying to terms of service prior to its enactment. It was void because it compelled railroads to pay toward a fund under which employees of other carriers would be pensioned. He held that the provisions whereby employees could retire after 30 years of service had no relation to the safety or economy of railroad service, and was thereby arbitrary and unreasonable. Nor did the law bear any reasonable relation to the regulation of commerce. Its enactment was thus beyond the power of Congress.

Four justices disagreed with this opinion. Chief Justice Hughes delivered the dissenting opinion, concurred in by Justice Brandeis, Cardozo, and Stone. Justice Hughes declared that the gravest aspect of the decision was that it denied "to Congress the power to pass any compulsory act for railway employees."

"If the opinion were limited to the particular provisions of the act which the majority find to be objectionable [he declared] . . . the Congress would be free to overcome the objections by a new statute. . . . But after discussing these matters, the majority finally raise a barrier against all legislative action of this nature by declaring that the subject matter itself lies beyond the reach of the congressional authority to regulate interstate commerce. In that view, no matter how suitably limited a pension act for railroad employees might be with respect to the persons to be benefited, or how appropriate the measure of retirement allowances, or how sound actuarially the plan, or how well adjusted the burden, still under this decision Congress would not be at liberty to enact such a measure. That is a conclusion of such serious and far-reaching importance that it overshadows all other questions raised by the act. . . ."

The Chief Justice maintained that the conclusion reached by the majority was "a departure from sound principles," and that it placed an "unwarranted limitation upon the commerce clause of the Constitution."

On May 27, 1935, the Supreme Court handed down a decision which shattered the N.R.A.—the decision in the Schechter Case. This time the decision was unanimous. It maintained that Congress had delegated too broad powers to the President, and had, through the codes, dealt with intrastate matters not within its purview.

"Section 3 of the Recovery Act [declared Justice Hughes, in dealing with the congressional delegation of power to the Chief Executive] is without precedent. It supplies no standards for any trade, industry or activity. It does not undertake to prescribe rules of conduct to be applied to particular states of facts

determined by appropriate administrative procedure. Instead of prescribing rules of conduct, it authorized the making of codes to prescribe them. . . . In view of the scope of that broad declaration, and of the nature of the few restrictions that are imposed, the discretion of the President in approving and prescribing codes, and thus enacting laws for the government of trade and industry throughout the country, is virtually unfettered. We think that the code-making authority thus conferred is an unconstitutional delegation of legislative power."

As for the wage and hour provisions of the codes, the Court held, they dealt with local, not interstate matters, and were thus not within the jurisdiction of Congress.

On the same day, May 27, the Court declared unconstitutional the Frazier-Lemke farm mortgage law, an act which provided 5-year moratorium under certain conditions on the selling of farm property.

The previous month, the Court held an Arkansas State emergency mortgage act void on the ground that it cut down the security of a mortgage without reason or moderation.

President Roosevelt maintained that these decisions were an attempt to take the United States back to the "horse and buggy stage." He declared that the biggest question before the country in years was whether or not to restore to the national government the powers that were vested in every other national government in the world—the right to enact and administer laws having to do with national economic and social problems.

While criticising the Supreme Court's pronouncement on the power of Congress over commerce, many radicals felt that the Court was correct in its belief that Congress should not delegate power to the President or other executive agent or to industry without laying down fairly definite principles by which action was to be guided. The corrective, however, should not come from the Court, but from Congress itself.

The second policy embodied in the Schechter decision is that the federal government cannot legislate about wages, hours, prices, production, and other practices of industry so far as these practices do not *directly* affect interstate commerce. Indirect effects, such as those that would flow from an increase in the purchasing power of wage earners generally, do not, in the mind of the Court, justify federal legislation. The states must regulate "intrastate" business. But this policy makes effective federal regulation virtually impossible. It renders political government impotent in effecting many social purposes. The practical effect of this "is to leave the power over social conditions where it already is—in the hands of irresponsible industrialists and corporations."

To demand that Congress be given greater power over intrastate commerce is not to say that all power should be centralized in the federal government. It is, however, to say, declares *The New Republic*, that "decisions as to which

functions should be centralized and which decentralized ought to be made on the basis of the purpose in view and of administrative efficiency, not on the basis of a more or less haphazard distribution of sovereignty among geographical units politically bounded, without reference to modern economic relationships, over a century ago."

Following its decision on the N.R.A., the Supreme Court in early January, 1936, held the A.A.A. unconstitutional in the Hoosac Mills Case. In this decision, the Court, by a vote of 6 to 3, held that the Constitution gave no express power to Congress to regulate agriculture. It did give it power to tax, and the processing tax was imposed for a definite purpose, namely, as a means of regulating agriculture, and the inclusion of the tax in such a scheme of regulation rendered it unconstitutional.

Justices Stone, Cardozo, and Brandeis took vigorous issue with the majority. Congress, they declared, possessed the power to tax. That power could not be regarded as unconstitutional, merely because Congress desired to use the proceeds for the purpose of helping to relieve the agricultural situation. A power of appropriation which could not set the conditions under which and the purposes for which the money would be spent, was completely useless. Justice Stone referred to "the mind accustomed to believe that it is the duty of the courts to sit in judgment on the wisdom of legislative action." "Courts," he continued, "are not the only agency of government that must be assumed to have capacity to govern."

He further urged the judiciary to realize that, while the acts of Congress might be reviewed by the Court, there was no body to review the decisions of the Court. Judges, therefore, must be especially careful not to defeat legislation because they disagreed with the wisdom of that legislation.

While in this decision the Court refused to permit Congress to use the taxing power to improve agriculture, it should be pointed out that it has never yet interfered with the power of Congress to erect tariff walls not for revenue but to assist in the building of specific industries and enhance the profits of industrialists.

The T. V. A. Decision

On February 17, 1936, another important decision was handed down by the Supreme Court in the case of the Tennessee Valley Authority. This 8 to 1 decision in brief maintained that it was constitutional for an agency of the United States government to generate electrical power at a dam built to improve a navigable stream, and to contract for the purchase of transmission lines and other properties to be used in connection with the sale of that power in the open market.

The suit brought before the Court grew out of a contract entered into on January 4, 1934, by the Tennessee Valley Authority and the Alabama Power Company, providing for the purchase by the Authority from the power com-

pany of certain transmission lines, sub-stations, and auxiliary properties for $1,000,000 and for certain real property, valued at $150,000; for an interchange of hydro-electric energy; for the sale by the Authority of its "surplus power" on stated terms; and for mutual restrictions as to the areas to be served in the sale of power.

Certain preferred stockholders of the Alabama Power Company brought suit to have the contract annulled, on the ground that it was injurious to corporate interests and beyond the constitutional power of the federal government.

Justice Hughes, who rendered the decision for the majority, held that the Tennessee River was a navigable stream; that Congress authorized the building of Wilson Dam for the improvement of this stream and for the elimination of a most serious obstruction to navigation and under the war powers; that "the Wilson Dam and its power plant must be taken to have been constructed in the exercise of the constitutional functions of the federal government; that the power of falling water was an inevitable incident of the construction of the dam;" and "that water power came into the exclusive control of the federal government. The mechanical energy was convertible into electrical energy, and the water power, the right to convert into electrical energy, and the electrical energy thus produced constitute property belonging to the United States. Authority to dispose of property constitutionally acquired by the United States is expressly granted to the Congress by Section 3 of Article IV of the Constitution."

Nor was the proposed method of disposing of the electrical energy generated unconstitutional. The T. V. A. contracted to purchase tranmission lines and to distribute power over such lines to an area within 50 miles of the dam. The alternative method would have been to sell the surplus energy at the dam, and the market there appeared to be limited to one purchaser, the Alabama Power Company and its affiliates. "We know of no constitutional ground upon which the federal government can be denied the right to seek a wider market. . . . . The government is not using the water power at the Wilson Dam to establish any industry or business. It is not using the energy generated at the dam to manufacture commodities of any sort for the public. The question of the constitutional right of the government to acquire or operate local or urban distribution systems is not involved. . . .

"We express no opinion as to the validity of such an effort, as to the status of any other dam or power development in the Tennessee Valley, whether connected with or apart from the Wilson Dam, or as to the validity of the T. V. A. Act or of the claims made in the pronouncements and program of the Authority apart from the questions we have discussed in relation to the particular provisions of the contract of January 4, 1934, affecting the Alabama Power Company."

Justice McReynolds, on the other hand, declared that the contract with the company "was a deliberate step into a forbidden field," and that its "primary purpose was to put the federal government into the business of distributing and selling electric power throughout certain large districts, to expel the power companies which had long serviced them, and to control the market therein."

Messrs, Brandeis, Roberts, Stone and Cardozo agreed with the conclusions of Justice Hughes, but held that the plaintiffs had no standing in court. They urged that the case should have been dismissed on that ground, especially as the Court always seeks—or should seek—to avoid a ruling on a constitutional question when it can invalidate a suit on other findings.

By this decision it is seen that if the acquisition of valuable property by the government is incidental to the performance of an acknowledged function of the government, such as the improvement of navigable streams or the development of national defense, the sale of such property in a legal manner is constitutional. The decision, however, lays no basis for the undertaking by the government of an ordinary industrial or commercial venture. It is not a promise to reform. Many question whether it would have been given if the Court had not been so widely criticised.

In 1925, the conservative Lord Birkenhead said to Americans: "The decision is premature whether you, and those who agree with you, have been right in trying to control the free will of a free people by judicial authority, or whether we have been right in trusting the free will and a free people to work out their own salvation."

Millions of Americans are now convinced that the experience of the last generation has proved that the British system has definitely shown itself to be the wiser. The members of the Supreme Court are usually appointed to reflect the general social philosophy of the President who appoints them. They are usually elderly, prosperous attorneys who have spent a large part of their professional life as legal representatives of big business. Their instincts have been usually conservative. They are removed from the people. They do not need to submit themselves during the rest of their career to popular elections.

Their social attitude powerfully affects their opinion as to whether or not a law is constitutional. "Constitutional law," as Professor Morris R. Cohen has it, "is just what the judges make it. A leading conservative newspaper put it aptly when it said that the United States Supreme Court is a continuous constitutional convention. This it is in fact. Yet we do not generally recognize it, else we should demand that the work of this constitutional convention be ratified by the people before it goes into effect or at any rate that the delegates be more responsive to, and in closer touch with, popular needs." It should also be pointed out that the Supreme Court uses its supreme economic power not only in declaring social legislation unconstitutional, but also in its interpretation of those laws which it does not declare unconstitutional.

Restricting or Outlawing the Judicial Veto

Senator Norris is of the opinion that the veto power of the Supreme Court over congressional legislation should be curbed, but not abolished. He would, however, prevent any constitutional question from being raised except within 6 months of the passage of the law that is brought into question, and would prevent a 5 to 4 decision from invalidating a law. No law, he declares, should be regarded as invalid unless it is pronounced unconstitutional by two-thirds of the Supreme Court. Parenthetically, it may be said that such an amendment would have had no effect on the decisions in the N.R.A., the Farm Moratorium, or the A.A.A. cases.

An increasing number are contending that the Supreme Court should have no power to declare acts of Congress unconstitutional. Some, as has been said, maintain that this power has been usurped by the courts. Others contend that the legislature, representing the will of the people, should be the final arbiter of that will.

A proposed statute, giving Congress rather than the Supreme Court power over the constitutionality of laws, follows:

"Congress shall have exclusive authority to pass upon and determine the validity and constitutionality of all laws and treaties of the United States, their territories, other possession or dependencies; this authority to be exercised, as occasion therefore may arise, either (a) by the Senate and House of Representatives, sitting in joint session by majority vote of their full membership; or (b) in such other manner as said houses, so organized, may, by such vote, prescribe."

We are told that, unless we have a Supreme Court as the watch dog of the legislature, many of our laws will be bad laws. The Supreme Court is the bulwark of our liberties. However, in times of emergencies we have frequently found that the Court upholds laws, such as the Espionage law during the World War, which deprives citizens of many of their civil rights.

It may also be said that the liberties of the people of Great Britain, France, Switzerland, and the Scandinavian countries seem to be safeguarded at least as well as are the liberties of the citizens of the United States. I would say somewhat better. And yet no court in those countries has the power to veto the legislative acts of the representatives of the people. Our nation survived the first 70 years of its existence without the veto power of the Supreme Court, but was almost rent asunder by the Dred Scott decision, in which the Court exerted its "usurped" power. The child labor, minimum wage, and several other laws that have been declared unconstitutional during the last 75 years were laws of distinct social advantage.

"And it may be well argued," as Professor Morris Cohen declares, "that our present depression is in part due to such judicial vetoes as those in the Lochner

case, the Adair case, the child labor cases, the minimum wage cases, and others, which by depressing the economic power of the laboring classes have depressed our home markets. . . . In no other civilized country would people endure a legal system in which such a question as that of the legality of certain codes could remain undetermined for two years. In no other country also is there such a complete separation between power and responsibility as in ours, where those who have the final word on all questions of law are in no way answerable to the popular will or to any other earthly authority."

The power of the Supreme Court extends not only over the legislation it actually passes upon, but over all legislation suggested by the people of the country. For under our judicial system, the question that is bound to arise when any bill is introduced is whether the bill will, if enacted, pass the scrutiny of the nine elderly judges in Washington.

This has a tendency, as James Bryce brought out years ago, greatly to impair the quality of American legislation. In Great Britain, when a piece of legislation goes before Parliament, the question arises, "Is this measure expedient?" But in America, opponents of a measure may argue also "that it is unconstitutional, i.e., illegal, because transcending the powers of Congress. . . . And it is a question on which a stronger case can often be made, and with less exertion. . . . Legal issues are apt to dwarf and obscure the more substantially important issues of principle and policy, distracting from these latter the attention of the nation as well as the skill of congressional debaters."

"What encouragement is there to public spirited citizens," asks Dr. J. C. Harper, "to devote time and study to formulating and promoting the adoption of statutes only to have the courts declare them invalid? Experts in that line may cordially recommend, and similar legislation may have been tried and found beneficial in other countries, but all such considerations often prove unavailing as against the inferences certain judges may import into general words like 'liberty,' 'due process of law,' etc."

The judicial veto is responsible for (1) uncertainty as to what the law is; (2) increase in litigation, contributing to the breakdown in the administration of justice; (3) increase in the feeling of inequality before the law; (4) the impairment of the efficiency and quality of our legislative bodies, and (5) the assumption by the courts of legislative functions, making them mere political chambers.

It, of course, must not be inferred that, if the Supreme Court was deprived of its present power, Congress would enact adequate social legislation. This is far from the case. An analysis of the present political and economic controls of our Congressmen would vividly indicate the great need for change here. But the members of Congress are elected by the people and should be in a position effectively to carry out the people's will.

Changing the Number of Justices

Many in recent years have urged that the number of justices on the Court be changed as one means of liberalizing it. There is no provision in the Constitution regarding the number of members of that august body. As originally constituted, the Court had 6 members. This number was increased to 7 in 1807, and to 9 thirty years later, both increases being made to relieve the justices of the increasing burden of circuit duty.

Until 1869, when Congress provided for the appointment of 9 circuit judges, Supreme Court Justices acted as judges of the circuit courts.

During a part of the Civil War, from 1863 to 1865, there were technically 10 members of the Court. The following year Congress reduced this number to 8 in order to prevent President Johnson from filling expected vacancies. In 1869, when General Grant became President, the number was advanced again to 9. President Grant, in 1870, had 2 vacancies to fill, and took care to appoint men who were in favor of the Civil War greenbacks. On the same day as these appointments, the Court decided that the greenbacks were not "legal tender." The Attorney General, asked that the case be reopened, and the two new appointees made the decision 5 to 4 in favor of the greenbacks as "legal tender."

The question has thus arisen: "Did Grant pack the Court?" The first decision "leaked" to his Secretary of the Treasury through the Chief Justice himself and the unpublished diary of his Secretary of State quotes Grant to the effect that he appointed the 2 justices in order to secure the validity of the greenbacks. Since that time, the number of justices has remained the same. But if the Court proves very inflexible, Congress might increase the number, to allow the President to appoint enough progressives to swing the balance.

Give Congress Additional Power

But what is really needed is an amendment to the Constitution which affirmatively gives to Congress power to pass specific groups of laws now reserved to the states or forbidden to either. As we have elsewhere brought out, when the Constitution of the United States was adopted, most industry was local and of a comparatively primitive nature. Today, as has been previously shown, our industry is national and international.

The rapid developments in our industrial life, changes which necessitated an increasing amount of federal legislation and which demanded definite amendments to our Constitution, were clearly set forth by Woodrow Wilson as long ago as 1884.

"There are voices in the air [declared Wilson] which cannot be misunderstood. The times seem to favor a centralization of governmental functions such as could not have suggested itself as a possibility to the framers of the Constitution. Since they gave their work to the world the whole face of that world

has changed. The Constitution was adopted when it was 6 days hard travelling from New York to Boston; when to cross the East River was to venture a perilous voyage; when men were thankful for weekly mails; when the extent of the country's commerce was reckoned not in millions but in thousands of dollars; when the country knew few cities, and had but begun to manufacture: when Indians were pressing on new frontiers; when there were no telegraph lines, and no monster corporations. Unquestionably, the pressing problems of the present moment are the regulation of our vast systems of commerce and manufacture, the control of giant corporations, the restraint of monopolies, the perfection of fiscal arrangements, the facilitating of economic exchanges, and many other like national concerns . . . and the greatest of these problems do not fall within even the enlarged sphere of the federal government; some of them can be embraced within its jurisdiction by no possible stretch of constructions and the majority of them only by wresting the Constitution to strange and as yet unimagined uses."

Since Wilson wrote those words a half-century ago, there have been still greater changes in our American industrial life. Today, in the United States, 200 great corporations control over half of the wealth of the industrial corporations of the country and, if the trend toward concentration continues, by 1950 they will control about four-fifths of this wealth. The problem of labor has likewise become one of national and international significance. If business is largely national, not local, labor legislation should likewise be national in its scope. And yet, whenever the question of social legislation on a national scale is proposed, the bugaboo of unconstitutionality is held before the people and their duly elected representatives.

It is likewise argued by some that the enlargement of the functions of the federal government will lead to a dangerous centralization of power, and may pave the way for a dictatorship.

To which it may be answered that dictatorship usually comes not from making the ordinary democratic agencies of government adequate instruments of social control, but from the failure of these democratic agencies to meet the vital problems of the day.

If insecurity persists, as a result of inadequate social action, unrest develops, popular explosions occur, followed by demands for a dictatorship to deal with the unruly situation.

Of course, while changing the Constitution, it is of the utmost importance to build strong and powerful the political and economic movements of the workers by hand and brain, as only in the control of the government and industry by the masses is genuine democracy possible. It is likewise desirable to decentralize control as much as is consistent with social efficiency and social welfare. Those functions should be performed by the national government which can be carried out most effectively on a national scale. Those services should

be rendered by states and municipalities that are essentially local in their nature.

The grant of additional authority to the federal government, moreover, should not be regarded as primarily a means of permitting Uncle Sam to gain power at the expense of the states, but as a means, in considerable part, of protecting an advanced state from a backward state. The extension of federal authority, as Dr. Charles A. Beard brings out, is not an end, but merely a means to an end.

Dr. Beard illustrates his point by an analysis of the child labor situation. Among the rights claimed for each state is the right to allow private manufacturers to employ children ten or twelve years old and to cut costs of production by that expedient. The state that adopts this policy also claims as a right the privilege of dumping these low-cost products into other states, which, in the exercise of their rights, have forbidden the exploitation of cheap child labor.

"Whose ox is gored here? That of the federal government or of the other states? The answer is obvious. The federal government has little territory of its own. Besides the District of Columbia, forest reserves and a few other plots, it has no regions in its continental domain to be affected by the action of states under the guise of their own rights. The federal government as such is no party to the fight at all.

"When the federal government is drawn into this struggle, it is called upon to defend one group of states against another. It is invited to make uniform that exercise of states' rights which abolishes child labor. The question is not one of abstract centralization vs. local liberty. It is another question: which right of which state shall prevail—that of the high-level states or the low-level states? If a majority of the states wish to exercise the right of abolishing child labor shall they be defeated by a minority of states which wish to exercise the right of allowing children to be exploited?"

This situation has caused William Green, president of the American Federation of Labor, in June, 1935, in dealing with the problem of a constitutional amendment, to declare: "I am confident I correctly appraise the state of mind and correctly express the sentiments of the working people of the nation in stating that if the Constitution cannot be interpreted in the light of present day facts it should be amended so as to suit the needs of existing economic and social conditions."

In the closing hours of the American Federation of Labor convention in Atlantic City in October, 1935, a resolution was passed in favor of a constitutional amendment, the exact wording of which was left to the Executive Council.

In 1935, several amendments were introduced in Congress calculated to meet the situation. Senator Costigan proposed an amendment giving Congress power "to regulate hours and conditions of labor and to establish minimum wages in

any employment and to regulate production, industry, business, trade, and commerce to prevent unfair methods and practices therein."

The amendment provides further that the regulatory powers of the states shall not be impaired "except to the extent that the exercise of such power by a state is in conflict with legislation enacted by the Congress pursuant to this article." Along somewhat the same line is the amendment suggested by W. Y. Elliott, Professor of Government, Harvard University, that "The Congress shall have power to regulate commerce, manufactures, agriculture, and the extraction of natural resources throughout the United States."

The Socialist party and trade unions representing more than a million organized workers have indorsed the so-called Workers' Rights or Hillquit amendment to the Constitution, specifically empowering Congress to pass social insurance legislation and socialization legislation. The amendment was introduced in the House of Representatives by Congressman Marcantonio, and reads as follows:

> "Section 1. Congress shall have power to establish uniform laws throughout the United States to regulate, limit and prohibit the labor of persons under 18 years of age, to provide for the relief of aged, invalided, sick and unemployed wage earners and employees, in the form of periodical grants, pensions, benefits, compensation, or indemnities from the public treasury, from contributions of employers, or from one or more such sources, to establish and take over natural resources, properties and enterprises in manufacturing, commerce, transportation, banking, public utilities and other business to be owned and operated by the government of the United States or agencies thereof for the benefit of the people; and generally for the social and economic welfare of the workers of the United States.
>
> "Sction 2. The power of the several states to enact social welfare legislation is unimpaired by this article, but no such legislation shall supersede, abridge or conflict with any act of Congress under this article."

A shorter amendment introduced in 1935 by Congressman Keller proposes that "Congress shall have power to make all laws which in its judgment shall be necessary to provide for the general welfare of the people." Another proposal, to reduce "due process of law" to its original meaning, would give more power to state legislatures (if the local courts permitted) while the power of Congress would still be subject to the Court's decisicn.

A New Constitution

Finally, there are many who contend that the time has come, not for a constitutional amendment, but for an entirely new Constitution, together with entirely new controls of our political institutions.

"The solution," declares *The New Republic,* "is not to be found in a simple constitutional amendment permitting more exercise of federal and executive power, or in one stripping the Court of its assumed right to review legislation. To extend and centralize political power under existing conditions would, as some members of the court undoubtedly feared, merely given concentrated wealth another instrument with which to rule, while it would not furnish to government the means required to cope with wealth. President Roosevelt's reaction to the decision was natural, but to rally behind him in the demand for such an amendment would be fatal to the hopes entertained by progressives. Either the nation must put up with the confusions and miseries of an essentially unregulated capitalism, or it must prepare to supersede capitalism with socialism. There is no longer a feasible middle course. Such regulation as is to be effective in the meantime must be imposed and supported without much aid from law, by the economic power of the organized masses. When the time comes to give the government power to do the things that government ought to do, the organized masses must be prepared to control the government. When we can have a new Constitution and abolish private ownership of the principal means of production, we can aspire to a socially managed economy."

Summary

The Constitution must thus be made adaptable to the social and economic needs of the day. The government must be permitted to pass legislation of vital immediate importance to the masses. It must possess the undeniable right to socialize the basic industries of the country.

To guarantee these rights, the power of the Supreme Court to declare acts of Congress unconstitutional must be abolished. Amendments must be passed granting Congress and the states positive powers over social legislation which they do not now possess.

The most important of the proposed amendments now before the people is the Hillquit or Workers' Rights Amendment, an amendment giving Congress power to enact social insurance legislation and the power to transfer from private to public hands the key industries of America.

While building a political and economic movement dedicated toward a cooperative world, it is for us to promote the Workers' Rights Amendment with all the energy we possess and to follow this amendment with other changes.

Let us "Put the Constitution to Work" to abolish poverty, insecurity, injustice and dictatorship. Let us make it a powerful instrument in behalf of security, social justice, democracy and an abundant life for all. Let us help toward that end today.*

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*For the exact sources of the references made in this pamphlet, see Laidler, *A Program for Modern America.* Ch. XVI.

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America's "Best Governed" City

CITY GOVERNMENT. *Daniel W. Hoan.* Harcourt Brace. 1936.

The preceding pages of this volume have been devoted primarily to the need for changing the fundamental law of the land. The character of the Constitution under which we live is of great importance to all of us. But perhaps of greater importance is the type of political organization controlling our governmental machinery. In the United States and in most of the cities and states of the union, the ruling political party is controlled by business interests. A unique exception is that of Milwaukee, the largest industrial city in Wisconsin. Here Daniel W. Hoan, a Socialist, has served as Mayor since 1916.

On the twentieth anniversary of the occupancy of this office. Mayor Hoan has given to us a clear and straightforward story of his accomplishments and that of his party, the Socialist party. Today, we are told, Milwaukee is the safest city in the United States. Its fire hazards are lowest. Its burglary insurance rates are smallest. It has had for four successive years, the lowest fatality rate as a result of accidents. Its health record is among the highest. It secured first and second prizes for a series of years for its unusual health standards. It has made an enviable reputation in its parks and playgrounds.

In the last score of years no competent critic has lodged any charge of graft or corruption against the Chief Executive. Milwaukee has been widely hailed as the best governed city in the United States. The police have not been under the direct charge of the Mayor, but the Mayor has influenced their conduct in a number of ways. During strikes, he has seen to it that the strikers were fully protected in their legal rights. Much has been written about the finances of the city. Mayor Hoan describes how Milwaukee has been placed upon a cash basis. The public debt will be wiped out, he declares, by 1950, while the city has been emancipated from bankers' control.

Mayor Hoan sets forth with frankness the limitations of his office. He is a Socialist mayor, but the city cannot be socialized as an isolated unit in the midst of a capitalist state and union. A Socialist in the seat of authority in the city can conduct an efficient, honest, and socially visioned administration, and Mayor Hoan has done this to a remarkable extent. But he cannot create a Socialist city, for most of the industries can be socialized only by the nation. During the last twenty years, moreover, the majority in the City Council has for the most part been composed of non-Socialists and the Council has refused to pass a number of Socialistic measures. Despite, however, these impediments, Mayor Hoan has made a significant contribution to the life of his city. His achievements are not, however, primarily personal. They are achievements of

a party, the Socialist party. Mayor Hoan during his term of office has had the active cooperation, encouragement, and criticism of a well-knit, intelligent, socially minded political organization. This organization differs fundamentally from the average political machine. Its main drive is not jobs but service. As Socialists its members have sought to administer the city honestly and efficiently because they ardently desire the American people to transfer increasing economic and social functions from private to public ownership and know that one of the obstacles to such a development is the belief that public agencies are not capable of doing a competent job.

"The national and international objectives of the Socialist party," declares the author, "have prevented it from greatly deteriorating into a selfish aggregation of chronic office seekers. It has devoted its local energies to the immediate measures and demands necessary to improve the conditions of the toilers. Its national energies have been devoted to achieving the transition from capitalism to Socialism by the peaceful and intelligent use of the ballot."

No student of city government can afford to miss this contribution by the "Dean of American Mayors."

Notes on Contemporary Books

WAR—No Profit—No Glory—No Need. *Norman Thomas.* Stokes. 1935.

A brilliant analysis of the titanic forces making for war, and the economic and political program which the nations must adopt—and adopt without delay—if the world is not to be drawn into another destructive conflict. A powerful plea to avert immediate wars while striving to abolish the profit system, the breeder of wars.

Toward Social Security. *Eveline M. Burns.* Whittlesey House. 1936.

One of the simplest, clearest, and most authoritative volumes on the fundamental principles of a sound social insurance system thus far written. The author, a lecturer at Columbia University, has had a rich background of experience in Great Britain and on the Continent and draws on this experience in making her critical analysis of the Roosevelt social security program.

DEPRESSION ISLAND. *Upton Sinclair.* Pasadena: The Author. 1935.

A playlet describing in Sinclair's inimitable style a hypothetical discussion of the inhabitants of Depression Island on the fundamental causes of economic crises.

A FOOTNOTE TO FOLLY. *Reminiscences of Mary Heaton Vorse.* Farrar and Rinehart. 1935.

An intensely human document portraying glimpses of some of the most dramatic events in the history of the labor movement here and abroad during the last generation. Mrs. Vorse writes from first hand experience, and illuminates and vivifies every situation she touches.

SOCIAL PLANNING FOR CANADA. *The Research Committee of the League for Social Reconstruction.* Toronto: Thomas Nelson. 1935.

One of the most noteworthy efforts made by a group of thinkers in any country to apply the principles of Socialist planning to their particular nation. The League for Social Reconstruction corresponds in Canada to the League for Industrial Democracy in the United States. There is no phase of Canadian national life that is left uncovered by this volume. It is hoped that the example of our Canadian neighbors might stimulate equally valuable efforts in pioneer thinking in this and other lands.

NEW TRENDS IN SOCIALISM. *Edited by G. E. G. Catlin.* London: Lovat Dickson. 1936.

A searching analysis by a gifted group of 15 younger Socialists in Great Britain of the foreign and domestic problems before the Socialist movement. The book is written by those who are convinced that every effort should be made to bring about the change from capitalism to Socialism without an intermediary stage of dictatorship and civil war.

THE NEXT FIVE YEARS. *An Essay in Political Agreement.* Macmillan. 1935.

An attempt of 150 leading economists and publicists of liberal and radical tendencies to work out a far reaching but attainable program for Great Britain for the next five years.

ECONOMIC PLANNING. *G. D. H. Cole.* Knopf. 1935.

The distinguished British economist and Guild Socialist here presents one of the most thorough and scholarly treatises thus far written on the problems of a planless and of a planned economy.

Publications of the League for Industrial Democracy

NORMAN THOMAS

Why I Am A Socialist (L.I.D.)	$ .05
The Plight of the Sharecropper (L.I.D.)	.10

HARRY W. LAIDLER

How America Lives (L.I.D.)	.15
America in the Depression, Supplement to How America Lives	.10
Incentives Under Capitalism and Socialism (L.I.D.)	.15
Public Ownership Here and Abroad (L.I.D.)	.15
Unemployment and Its Remedies (L.I.D.)	.25
Socialist Planning and a Socialist Program—Edited by Dr. Laidler	.35
The Constitution In a Changing America (L.I.D.)	.15

STUART CHASE

Waste and the Machine Age (L.I.D.)	.15
Poor Old Competition (L.I.D.)	.10

JOHN DEWEY

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HAROLD J. LASKI—Karl Marx (L.I.D.)	.25
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JOSEPH P. LASH—Campus Strikes Against War (L.I.D.)	.10
JOHN BAUER—America's Struggle for Electric Power (L.I.D.)	.10
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Looking Forward, Discussion Outlines, 1934, 1935, 1936	.10
HERBERT SOLOW—Union Smashing in Sacramento	.05
Wisdom, Justice and Moderation—The Case of Angelo Herndon $1.50 per 100 or	.02
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WALTER WILSON—Militia—Friend or Foe of Liberty	.10

BOOKS

NORMAN THOMAS

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Human Exploitations (Stokes)	2.75
The Choice Before Us (Macmillan, 1934)	2.50
As I See It (Macmillan)	2.00
America's Way Out (Macmillan)	2.50

HARRY W. LAIDLER

A Program for Modern America (Crowell, 1936)	2.50
Socializing our Democracy (Harpers, 1935)	3.00
Concentration of Control in American Industry (Crowell)	3.75
The Road Ahead (Crowell)	1.00
History of Socialist Thought (Crowell)	3.50

(Lower Prices for Quantity Orders)

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112 East 19th Street, New York City

THE LEAGUE FOR INDUSTRIAL DEMOCRACY is a membership society engaged in education toward a social order based on production for use and not for profit. To this end the League conducts research, lecture and information services, suggests practical plans for increasing social control, organizes city and college chapters, publishes books and pamphlets on problems of industrial democracy, and sponsors conferences, forums, luncheon discussions and radio talks in leading cities where it has chapters.

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